Software Contract History and Procedures

Historical Context

Historically software contract purchases were not reviewed globally by the University for terms and conditions in accordance with State Law, technical requirements, and other system policies.

Additionally, the conventional thought process at the time was that any purchase under $5000 did not need review or was exempt from components of the standard procurement process.

Legal, Compliance, and Procurement, through standard review practices, began making adjustments to University policy in 2021.

- Aug. 11th 2021 Legal and Compliance brought a revised version of the policy forward to University Council, the policy was covered as "new items"
    - https://www.montana.edu/universitycouncil/agendas_uc/2021agen_uc/uca_20210811.html
- Sept. 1st 2021 Legal and Compliance brought a revised version of the policy forward with suggested changes to University Council the policy was covered as "old items"
    - https://www.montana.edu/universitycouncil/agendas_uc/2021agen_uc/uca_20210901.html
- Oct. 6th 2021 Legal and Compliance brought a revised version of the policy forward to University Council for a vote. The policy was covered as "old items"
    - https://www.montana.edu/universitycouncil/agendas_uc/2021agen_uc/uca_20211006.html
    - Policy adopted via vote and approved and minutes approved the following UC

These policy changes target the requirement to comply with state law and designate responsible parties to review new and renewed contracts.

Current Software Process

1. All Employees when renewing or purchase software through standard procurement processes.
2. The procurement specialists within central procurement review the terms and conditions to meet specific criteria, working with the vendor to either stay silent or change terms and distribute to Legal and UIT as needed.
3. Once those negotiations have taken place they coordinate with Legal and/or UIT with a recommendation.
4. If the terms and conditions are still not acceptable Legal will engage with the Vendor's legal counsel.
5. UIT will perform a review of the technical requirements
6. If terms and conditions are not met the software is not acquired (some exceptions apply)

Common Contract Discussion Points (Not a complete list) Please note that although the policy is written in terms of "the University requires" or "University cannot," all of these provisions are directly driven by state law.

420.00 Governing Law and Venue

The University requires Montana governing law and jurisdiction for all University Contracts unless the agreement is with another public agency, in which case the agreement may remain silent on governing law and jurisdiction. If a party insists on governing law or jurisdiction of another state or country, then the Authorized Signatory must consult with the Office of Legal Counsel for guidance.

430.00 Indemnification/Hold Harmless

The University requires deletion of any requirement for the University to "indemnify" or "hold harmless" another party to a contract for damages or losses resulting from claims against the other party. If a party insists on indemnification language, then the Authorized Signatory, or appropriate reviewing department as indicated in Section 320.00 above, must consult with the Office of Legal Counsel for guidance.

440.00 University Insurance

The University cannot agree to provide insurance greater than or different from the statutory self-insurance provided by the State of Montana. Montana law provides for tort liability self-insurance with limits of $750,000 per claim and $1,500,000 per occurrence, and the University is not authorized to list third parties as additional insureds or loss payees under the state self-insurance plan. Authorized signatories must ensure University Contracts do not obligate the University to provide insurance it does not possess.

450.00 Confidentiality

The University is subject to Montana's Open Records laws, which require disclosure of certain records maintained by the University, with some limited exceptions. The University cannot agree to a confidentiality requirement that does not provide an exception for disclosures required by law (e.g., where required by court order or state or federal law).

460.00 Term

The University may not enter into contracts with terms longer than seven (7) years, inclusive of any autorenewal provisions, with limited exceptions (e.g., hardware or software purchases). Autorenewal provisions are not allowed.